

**Central Administrative Tribunal
Principal Bench**

OA No. 3527/2013

Order reserved on: 20.05.2016

Order pronounced on: 31.05.2016

Hon'ble Mr. Justice M.S.Sullar, Member (J)

Hon'ble Mr. V. N. Gaur, Member (A)

BanarsiDass,
Manager, Infra-Sales
BSNL Office, 6th Floor,
Statesman House, Connaught Place,
New Delhi.

Residential Address:

BanarsiDass
A-359, Govind Puram
Ghaziabad (UP).

- Applicant

(By Advocate: Sh. G.D.Bhandari)

Versus

Bharat Sanchar Nigam Ltd.
Through

1. Chairman-cum-Managing Director,
Bharat Sanchar Bhawan,
3rd Floor, Janpath, New Delhi.
2. The Director,
Bharat Sanchar Bhawan,
3rd Floor, Janpath, New Delhi.
3. The PGM,
Bharat Sanchar Bhawan,
3rd Floor, Janpath, New Delhi.
4. The GM (P),
Bharat Sanchar Bhawan,
4th Floor, Janpath, New Delhi.

- Respondents

(By Advocate: Sh. M.M.Sudan)

ORDER**Hon'ble Mr. V.N.Gaur, Member (A)**

The applicant has filed the present OA with the following prayer:

- “i) to set aside and quash the impugned orders Annexure-A dated 09-07-2013 alongwith punishment orders dated 15.1.10, Annexure A-1 and rejection of appeal orders dated 15.07.2011, Annexure A-21 and restore the applicants pay at the stage when the punishment was enforced, with all consequential benefits of seniority, promotion and other ancillary service benefits.
- ii) to make refund of the amount so recovered/deducted towards the enforcement of the punishment orders with 24% interest from the date of deduction to the date of payment.
- iii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice.”

2. The applicant retired as Manager, Infra-Sales under the respondents on 30.06.2013. He was served with a chargesheet alleging grave irregularities in the purchase of Fire Extinguishers during the period 28.11.2001 to 07.01.2003 when he was posted as SDE (MM) in the office of GMTD, Moradabad. After conducting the disciplinary enquiry in accordance with the rules the Enquiry Officer (EO) gave his report on 25.07.2008 holding that the charges were 'not proved'. The disciplinary authority, however, issued a disagreement note and after considering the representation of the applicant to the disagreement note, passed an order imposing the penalty of reduction to a lower stage for one year in the time scale by two stages without cumulative effect. His appeal was also rejected. The applicant had filed **OA**

No.1186/2010 prior to the disposal of his statutory appeal by the appellate authority. During the pendency of the OA, the Appellate Authority disposed of the appeal. The OA was, therefore, amended and was heard on 18.03.2013. The applicant had made the following prayer in that OA:

“i) to set aside and quash the impugned penalty orders dated 15.01.10, Annexure A-1 alongwith Appellate Authority order dated 15.07.2011, Annexure A-21 with all consequential benefits of refund of the deducted amount and restore the applicant’s pay which he has been drawing before imposition of penalty.

ii) any other relief deemed fit and proper in the facts and circumstances of the case, may also be granted in favour of the applicant alongwith heavy costs against the Respondents, in the interest of justice.”

3. The Tribunal after examining the contentions raised by the applicant and the submissions made by the respondents came to the conclusion that it was a case where during the departmental enquiry neither any oral evidence nor any documentary evidence remained available against the applicant and hence it became a case of “no evidence”. Consequently, the impugned order of the disciplinary authority and appellate authority and the disagreement note were quashed. The respondents were given liberty to proceed with afresh against the applicant in accordance with the law from the stage from which the evidence was to be adduced against him. Para 13 to 15 of that order is reproduced below for ready reference:

“13. In our opinion, this negates the contention of the respondents that the applicant has not objected to the documents relied upon by the respondents and so they can be taken on record and read as

evidence. Thus, since these documents have not been proved by the respondents by producing any witness and giving an opportunity to the applicant to cross-examine those witnesses, they cannot be relied upon against the applicant.

14. From the above, it emerges that neither any oral evidence nor any documentary evidence remains available against the applicant. Hence, it becomes a case of 'no evidence'. Consequently, the impugned order of the DA and appellate authority and the disagreement note also cannot be sustained.

15. Accordingly, the OA succeeds. The impugned orders are quashed and the applicant will have to be granted all consequential benefits. However, the respondents will be at liberty, if they so desire, to proceed afresh against the applicant, in accordance with law, from the stage from which evidence was to be adduced against him. There will be no order as to costs."

4. The respondents thereafter issued an order on 09.07.2013 under the powers conferred by Sub Rule (1) of Rule 37 of BSNL CDA Rules, 2006 ordering a fresh enquiry in the case from the stage of adducing evidence. The order further stated that earlier the Disciplinary Authority of the applicant was CGMT, BSNL, UP (West), Meerut but following the retirement of the applicant as Manager (Infra-Sales), as per CDA Rules, 2006 his Disciplinary Authority would be Director (HR), BSNL. The enquiry was to be conducted by one Sh. N.K.Narang, the then DDG (MIS) and now CGM BBNW Circle, New Delhi, who had been appointed earlier as Inquiry Officer by order dated 09.09.2005.

5. Learned counsel for the applicant challenged the impugned orders on the following grounds:

(1) It was submitted that the order dated 09.07.2013 was not a valid order because the authority issuing this order

was not competent to do so as the applicant had already retired on 30.06.2013. Only the President had the powers to approve initiation of departmental enquiry against a retired employee.

(2) The charge sheet itself was barred by delay and laches and the principle of limitation, as it pertained to an incident that occurred in 2001-2003 and even after the decision of this Tribunal in OA No. 1186/2010 on 18.03.2013 it is more than 3 years that no action has been taken by the respondents.

(3) Referring to the advice of CVC dated 19.07.2004 (Annexure-4) to OA, learned counsel submitted that the CVC had advised major penalty proceedings against the then GM, two DGMs, two SDEs (including the applicant), one AGM and one line man. A minor penalty proceeding against another AGM was also advised. The applicant was, however, singled out and departmental proceeding was held against him and penalty was imposed. In reality the act for which the applicant was responsible was only a procedural irregularity which could not be termed as misconduct. In this connection, he relied on **Kailash Nath Gupta vs. Inquiry Officer, Allahabad Bench**, AIR 2003 SC 1377,

Chairman & MD Bharat Petroleum vs. T.K.Raju, 2006 (1) SC 431.

(4) It was further submitted that as already held by this Tribunal it was a case of 'no evidence' and the entire article of charges were based on suspicion and doubt.

(5) The respondents have in the meantime dropped the proceedings against two officers who were originally accused in this case and another officer, namely R.P.S.Panwar, had approached this Tribunal in **OA No.4139/2010** wherein the Tribunal quashed the memorandum dated 25.10.2004 on the ground of inordinate delay in the enquiry. The respondents, however, have not given similar treatment to the applicant.

6. The learned counsel for the respondents submitted that the Tribunal in its order dated 18.03.2013 had given liberty to the respondents to proceed afresh against the applicant in accordance with law from the stage from which the evidence was to be adduced against him and the respondents ordered fresh enquiry on 09.07.2013. Therefore, the applicant cannot complain of a delay in ordering fresh enquiry. He, however, could not apprise the Bench about the present status of the enquiry. He refuted the submission of the learned counsel for the applicant that the order dated 09.07.2013 was issued by an incompetent

authority as under the rules a disciplinary proceeding that had started prior to the retirement of an employee would continue even after his retirement and would not require a fresh approval of the competent authority. In this case while exercising the power under Sub-Rule (1) of Rule 37 of BSNL CDA Rules, 2006, the competent authority had ordered a fresh enquiry to be conducted from the stage of evidence and therefore, it was only a continuation of the same disciplinary proceeding that started in the year 2004. With regard to the delay, the learned counsel submitted that the period 2003 to 2013 has already been considered by the Tribunal in OA No.1186/2010, and therefore, that issue cannot be raised by the applicant at this stage. With regard to the contention of the applicant is that allegations against him were nothing but procedural irregularity, he was vehement in stating that the article of charges were quite serious and based on documentary evidence. The Tribunal in OA No.1186/2010 had taken a view of 'no evidence' on the technical ground that the documents relied upon by the prosecution were taken on record in the departmental enquiry without authentication and therefore, it could not be treated as evidence. From this it cannot be concluded that there will no evidence against the applicant even in the fresh enquiry.

7. We have heard the learned counsels and perused the record. This Tribunal in OA No.1186/2010 had granted the liberty to the

respondents to proceed afresh from the stage from which evidence was to be adduced against him after quashing the impugned orders, i.e., penalty order dated 15.01.2010 and the appellate authority order dated 15.07.2011. It is, therefore, not understood as to why the applicant has again made the same prayer of quashing two orders in the relief para 8.1 in this OA. In any case this part of the prayer is infructuous. The respondents have issued the order on 09.7.2013 for a fresh enquiry under Sub-Rule (1) of Rule 37 of MTNL CDA Rules 2006 which cannot be said to be unduly delayed when the Tribunal's order itself was passed on 08.03.2013. There is no substance in the submission of the applicant that the disciplinary proceeding is badly delayed. It will definitely be a case of inordinate delay if the enquiry has not proceeded since 2013. However, the learned counsel for the respondents was not in a position to apprise the Bench about the present status of the departmental enquiry. The other grounds taken by the applicant to challenge the order dated 09.07.2013 are:

- (a) it was issued by an incompetent authority;
- (b) the disciplinary authority had been changed; and
- (c) in a similar case of Sh. R.P.S.Panwar this Tribunal had by order dated 19.08.2011 in OA No.4139/2010

quashed the proceedings on the ground of delay in the enquiry.

- (d) Parity with other officers who were accused in the same case but were either not proceeded with or let off at a later stage.
- (e) It was a case of no evidence.

8. With regard to the first issue, the learned counsel for the respondents has explained the position, and we agree, that in the present case the disciplinary proceedings had been initiated against the applicant way back in 2004 and the same was completed by imposing the penalty. The fresh enquiry ordered on 09.07.2013 by the respondents is nothing but a continuation of same proceedings from the stage of adducing evidence. Therefore, it cannot be treated as a new enquiry for which the approval of authority competent to approve initiation of disciplinary proceeding after the superannuation will have to be taken.

9. Regarding the contention that the disciplinary authority of the applicant has been changed, it is noticed that the order dated 09.07.201 itself explains that since the applicant retired from the post of Manager (Infra-Sales) at Delhi, his disciplinary authority will be Director (HR), BSNL.

10. On the question of parity with Sh. R.P.S.Panwar, the applicant in OA No.4139/2010 it is noted that Sh. Panwar had filed the OA in 2010 and his contention of extraordinary delay in completing the enquiry in respect of the charge sheet of 2004 was accepted by this Tribunal and the same was quashed. However, around the same time the applicant had filed OA No.1186/2010 taking the plea of delay and laches also but this Tribunal vide the order dated 18.03.2013 gave the liberty to the respondents to proceed afresh against the applicant. Therefore, the plea of delay and laches at this stage is barred by res judicata.

11. The applicant has also alleged discriminatory treatment in as much as other officers involved in the same case have been let off by the respondents despite the advice of CVC to take action against them. This argument would have carried weight had those officers also been part of the same charge sheet or common inquiry. The charge sheet dated 27.12.2004 mentions the name of the applicant only. The applicant has not cited any law that warrants parity with those whose names were not included in the charge sheet. On other issues raised by the applicant we refrain from commenting at this stage lest it should influence the proceedings in the disciplinary enquiry.

12. The applicant has cited a number of judgments in support of the various grounds taken by him. These cases relate to

procedural irregularity vs. misconduct, and that the appellate authority must decide all issues raised by the appellant. These judgments will be relevant only after the enquiry is completed and the orders are passed by Disciplinary Authority, and, if the contingency arises, by the Appellate Authority.

13. We are, however, concerned that the charges against the applicant pertain to the year 2001 - 2003, and after the liberty granted by the Tribunal for fresh enquiry also, more than 3 years have passed but the learned counsel for the respondent is not in a position to indicate either the present status of the enquiry or the likely period in which the same will be concluded. The applicant has already superannuated in 2013 and for the last three years he is in a state of uncertainty because of the disciplinary proceedings pending against him.

11. We, therefore, do not find any merit in the prayers of the applicant and dispose of this OA with a direction to the respondents to expedite the disciplinary proceeding against the applicant to complete it within the shortest possible time but not exceeding three months from the date of receipt of a copy of this order. No costs.

(V.N. Gaur)
Member (A)

(Justice M.S.Sullar)
Member (J)